IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal No.704/05

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande,J**
DATE : 25th September, 2006

Heard Shri Mardikar, learned counsel for the appellant and Shri A. P. Tathod, learned counsel for the respondent.

2. This appeal is under section 30 of the Workmen's Compensation Act. The applicant filed an application before the Commissioner under the Workmen's Compensation Act for grant of compensation against the respondent alleging that he was working with the respondent at the relevant time and on 29.9.1992 when he was operating the thrasher machine three fingers of his right hand were cut. Thereafter, he was admitted in the Hospital for a considerable period. Since the respondent did not pay any compensation he filed application under the Workmen's Compensation Act. The Commissioner after appreciating the evidence held that the applicant was employed with the respondent and awarded compensation of Rs. 21,535/- along with interest thereon @ 6% p. a. and also granted penalty of 50% on the amount of compensation. According to the

Commissioner, the applicant had proved his case that his 3 fingers were caught while operating the threshing machine. The present appeal is at the instance of the applicant claiming higher compensation.

3. Mr. Mardikar, learned counsel appearing for the appellant submitted that the Medical Certificate Exh. 16 issued by the Civil Surgeon, District Hospital, Akola discloses that the applicant had not only lost three fingers of his hand but actually his hand was amputed below elbow and, therefore, the applicant is entitled to the higher compensation. According to Mr. Mardikar, the Commissioner has wide powers and he ought to have granted higher compensation on the ground that the hand of the applicant was amputed on account of the accident suffered while working with the respondent. Placing reliance upon section 23 of the Workmen's Compensation Act, the learned counsel submitted that this is a fit case in which the matter has to be remanded to the Commissioner.

4. Per contra, Mr. Tathod the learned counsel appearing for the respondent submitted that no substantial question of law is involved in the present appeal and the findings given by the Commissioner cannot be interfered.

5. I have considered the submissions made by the

learned counsel for the parties. It is pertinent to note that all throughout before the Commissioner it was the case of the applicant that his three fingers were cut in the accident which occurred while operating the thresher machine. In support of this fact, the applicant relied upon the Certificate Exh. 16. I fail to understand as to how solely relying upon Exh. 16 the applicant can now claim that the higher compensation ought to have been awarded on the ground that there was amputation of the hand below elbow. When the applicant came with the specific case which has been accepted by the Commissioner, in my opinion it is too late for the applicant to contend that higher compensation ought to have been awarded on the basis of Exh. 16 and that too in the second appeal which can be only admitted on substantial questions of law in terms of section 30 of the Workmen's Compensation Act.

6. I do not find any merit in the submissions of Mr. Mardikar that this is a fit case which deserves to be remanded to the Commissioner. I do not find any substantial question of law involved in the appeal. Hence, the appeal is summarily rejected.

Judge

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